2021 IL App (4th) 200548-U

NO. 4-20-0548

FILED
March 25, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re A.N., L.N., and S.N., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 20JA32
v.	)	
Rommel D.,	)	Honorable
Respondent-Appellant).	)	J. Brian Goldrick,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding at the dispositional hearing that respondent father was unfit was not against the manifest weight of the evidence.

¶ 2 Respondent, Rommel D., is the father of L.N. (born June 2014) and A.N. (born April 2015). Shaniqua N. is the mother of L.N., A.N., and S.N. (born April 2012). S.N. is not involved in this appeal.

¶ 3 In March 2020, the State filed two petitions for adjudication of neglect, one regarding S.N. and one regarding L.N. and A.N. The second petition alleged that L.N. and A.N. were neglected due to their being minors less than 18 years of age whose environment was injurious to their welfare when in the care of Shaniqua because she had unresolved issues of domestic violence and anger management that created a risk of harm. 705 ILCS 405/2-3(1)(b) (West 2018). In July 2020, at an adjudicatory hearing, Gloria N., Shaniqua's mother and S.N.'s

primary caregiver, stipulated to the allegations in the petition regarding S.N.

¶ 4 In September 2020, the trial court conducted a dispositional hearing, adjudicated the minors wards of the court, and placed guardianship of the children with the guardianship administrator of the Department of Children and Family Services (DCFS). The court found (1) Shaniqua and Rommel unfit for reasons other than financial circumstances alone to care for the minors and (2) it was in the minors' best interest to remain in the custody of DCFS.

¶ 5 Rommel appeals, arguing the trial court erred by (1) removing the custody of L.N. and A.N. from Rommel at the shelter care hearing, (2) finding that Rommel was unfit at the dispositional hearing, and (3) finding it was in the minors' best interests to remain in DCFS custody. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 Although this appeal does not concern S.N., because the circumstances regarding how this case came before the trial court are relevant, we provide information relating to S.N. to the extent necessary to provide appropriate context. In addition, because (1) without objection Rommel throughout the proceedings below relied upon the evidence presented at the shelter care hearing and (2) other parties also referred to that same evidence, we set forth that evidence to provide context for his arguments in the trial court and on appeal.

¶ 8 A. The Petitions and the Shelter Care Hearing

¶ 9 In March 2020, the State filed a petition for adjudication of neglect, alleging S.N. was neglected due to Gloria and Shaniqua's unresolved issues of domestic violence and anger management. The State filed incident reports in conjunction with the petition, and those reports revealed that S.N. was taken into custody after a domestic violence incident occurred at Gloria's residence, where S.N. lived, on February 17, 2020. The incident reports further provided that

Shaniqua went to Gloria's house and got into a physical altercation with Gloria in front of S.N.

¶ 10 Two days later, on March 11, 2020, the State filed a petition for adjudication of neglect as to L.N. and A.N., alleging they were neglected due to (1) Shaniqua's unresolved issues of domestic violence and (2) Rommel's substance abuse.

¶ 11 On March 12, 2020, the trial court conducted a shelter care hearing regarding L.N. and A.N. The shelter care report stated that S.N. was taken into protective custody on March 6, 2020. "Due to the related case and previous reports indicated on Shaniqua, the safety and custody of [L.N. and A.N.] was in question."

¶ 12 The State presented the testimony of Barbara Kulbiski, a child protection specialist for DCFS. Kulbiski testified that, because S.N. was taken into care, she was investigating L.N. and A.N. to make sure they were safe and that Shaniqua did not have access to them. Kulbiski called Rommel in early March, a few days before she visited Rommel's residence, and informed him of the investigation and the need to see the children. Rommel indicated he lived with his aunt and she did not want DCFS to come to her home.

¶ 13 Kulbiski visited the home on March 10, 2020, and attempted to speak with Rommel. Rommel first denied her entry and declined to provide any information. Rommel then permitted Kulbiski to enter to speak with his aunt, Theresa D. Rommel showed Kulbiski (1) "a child care authorization, and *** [(2)] a paper signed by the court stating that he had—he was responsible for the care of the children ***." Kulbiski stated the information was not sufficient to demonstrate custody. Kulbiski saw L.N. and A.N. playing video games in the living room with a teenage male. Theresa stated "[s]he had nothing to hide but she did not want DCFS involved in her home[,]" and refused to provide information. Kulbiski informed Rommel and Theresa that if she did not receive the information, she would have to call her supervisor and may have to call

law enforcement to take custody of the children.

¶ 14 Kulbiski testified that she went to her car and called her supervisor, who told her to call the police and take protective custody of L.N. and A.N. About 20 minutes later, a police officer and another DCFS investigator arrived, and the three of them went to speak with Rommel. Theresa allowed them inside the home and provided some information about the persons living in her residence. Rommel was not present and Theresa would not say where he was. The officer and DCFS investigator learned Rommel was upstairs and, when they went to look for him, smoke poured out of one of the bedroom doors. The home smelled of cannabis and the officer and DCFS investigator found a bong on the bedroom floor.

¶ 15 Kulbiski stated that Rommel came downstairs and appeared intoxicated, although he had earlier appeared sober. Kulbiski testified that, "[Rommel] admitted to smoking marijuana while on the couch, in the presence of law enforcement and in front of myself and the other [DCFS investigator]." The shelter care report stated that "smoke rolled out of the bedroom the teenagers were in." Kulbiski testified that there were "two other males" present, ages 19 and 16.

¶ 16 On cross-examination, Kulbiski acknowledged that (1) she did not see Rommel smoke, (2) she did not see anyone else smoke, (3) they could not determine if any of the teenage males were intoxicated, (4) they did not take the teenagers into care, and (5) Teresa appeared completely sober. Kulbiski agreed that DCFS does not usually take protective custody simply because a parent refused to cooperate. Kubliski clarified that Rommel was asked "are you smoking? Are you high? And he admitted to smoking marijuana—or cannabis at that time." Kubliski further stated, "There was some concern that *** the other two males, one being 16, was also in the bedroom smoking—or using cannabis." Kulbiski acknowledged that no one told her that happened nor did she see that had happened. She included that in her report because

"that was a discussion between the other [DCFS investigator] and law enforcement."

¶ 17 Kulbiski explained that L.N. and A.N. were taken into care because "there would have been nothing preventing Mom, who would have had previous—part of a previous investigation, there would have been nothing stopping her from coming in and taking the kids[.]" In addition, Rommel was intoxicated while caring for L.N. and A.N., thereby creating a risk of harm.

¶ 18 Rommel called Theresa, who testified that Rommel had been living at her home with L.N. and A.N. for the past seven months. The "other males" were Theresa's two sons and her nephew, ages 20, 17, and 18, respectively. Theresa stated (1) she did not permit cannabis use in her house, (2) no one had ever used cannabis in her house, (3) Rommel was not intoxicated on March 10, and (4) L.N. and A.N. were never at risk of harm.

¶ 19 The trial court concluded there was probable cause and an immediate and urgent necessity to take the children into care because Rommel used cannabis (1) in close proximity to minors under the age of 21, likely in front of teenagers in the upstairs bedroom, and (2) while caring for L.N. and A.N. The court further noted that the bong was accessible to the minors including L.N. and A.N. The court rejected Rommel's argument that any alleged conduct with regard to cannabis use was protected by the Cannabis Regulation and Tax Act (Cannabis Act) (410 ILCS 705/1-1 *et seq.* (West Supp. 2019)). The court placed temporary custody with the guardianship administrator of DCFS, consolidated L.N. and A.N.'s case with S.N.'s case, and ordered Rommel to cooperate with DCFS or risk termination of his parental rights.

¶ 20 B. The Adjudicatory Hearing

¶ 21 In July 2020, the matter proceeded to an adjudicatory hearing. The parties stipulated to the admission of police reports from the incidents of domestic violence at Gloria's

residence in January and February 2020 while Gloria was caring for S.N. and that the officers would testify consistently with the statements in the reports. Gloria stipulated to the allegations against her in the petition, and the State dismissed the allegations against Rommel, who did not object or present any evidence. Shaniqua asserted "that there has been nothing to prove that [Shaniqua] has neglected her children." The trial court considered the police reports and Gloria's admission and found that the State had proved by a preponderance of the evidence that (1) the minors were subject to a neglectful environment and (2) Shaniqua had unresolved issues of domestic violence and anger management.

¶ 22 C. The Dispositional Hearing

¶ 23 1. *The Evidence Presented*

¶ 24 In September 2020, the trial court conducted a dispositional hearing. The dispositional report prepared by a DCFS caseworker stated that "Rommel reports he smokes marijuana 2-3 times per week to c[al]m his nerves." "He reports he smoked a blunt on his way home from work and marijuana is legal in the [S]tate of Illinois." "Rommel has not yet obtained a substance abuse assessment and has repeatedly stated it is not necessary as 'we[e]d is legal'."

¶ 25 The integrated assessment, a 39-page detailed report about this family that was submitted to the trial court and parties *in addition to* the dispositional report, included the following statements: "[Rommel] claimed to have custody of both children since 2018 but was unable to produce the appropriate supporting documentation." "[H]e believes that it helps him calm his nerves and 'think better to understand what is going on.' " "[H]e refuted [the claim that he used marijuana in front of his children] by stating that he only smoked marijuana when the children were not at home or when he left the home and his aunt was asked to watch the children." "[Rommel's] use of marijuana and exposing his children to substance use in his home

was a primary consideration resulting in the children's placement into DCFS substitute care."

¶ 26 2. *The Arguments of the Parties*

¶ 27 The State argued that the minors should be made wards of the court and requested that guardianship be removed from the parents and placed with DCFS. The State requested that the trial court find both parents unfit and unable to care for the minors and for the minors to remain in DCFS custody.

¶ 28 Rommel argued that the trial court should find him fit. Rommel noted that although L.N. and A.N. were taken into care because of cannabis use, Rommel denied such use and presented evidence at the shelter care hearing that he did not use cannabis when around the children. Further, the children were adjudicated neglected based on Shaniqua's conduct, but the State dismissed the allegations of substance abuse against Rommel. Rommel also contended that because private use of cannabis was now legal, the State was required to prove by clear and convincing evidence that Rommel's use created a substantial risk of harm to L.N. and A.N., something the State had not done because it presented only hearsay statements and conjecture. Rommel asserted that the information in the integrated assessment and dispositional report showed that the only reason Rommel needed assessments or services was to deal with issues created by his children's removal, namely, his anxiety and depression and substance use as a coping strategy.

¶ 29 3. *The Trial Court's Findings*

¶ 30 Regarding Rommel, the trial court stated the following:

> "[Rommel] does not have a lot to do in the Court's eyes. The Court's reviewed the Integrated Assessment. I understand the arguments made by [Rommel's counsel] here today. Court would note that there is—there are

statements in the Integrated Assessment by [Rommel] regarding his usage of marijuana. I recognize that marijuana is legal, just as alcohol is legal, but simply because something is legal doesn't mean that we don't have issues with it. If it becomes a medical issue for [Rommel] and he has a medical marijuana card, then that's something different. But it's indicated in the Integrated Assessment by him that he uses it as a calming agent. That's why there is [*sic*] recommendations for assessments for substances and for psychiatric issues. They may be nothing, but they are assessments that need to be engaged in to address whether there is the need for any treatment. We engage in the assessments. If there isn't, then we'll have those results.

I understand [Rommel's counsel's] position regarding adjudicatory findings as well. Just because one is not adjudicated as having perpetrated any type of abuse or neglect—and, again, we do look at it from the standpoint of the children—if parents are not listed as perpetrators *per se*, there are services that may be necessary in the nature of what a noncustodial parent may have to do. There are some services that are recommended. Again, I believe they are minimal. I think they can be addressed easily. The Department needs to assess the residence, the actual home where [Rommel] is, run background checks on anybody who would be living in that home. But, again, I think it's minimal for [Rommel].

Court believes that he is unfit at this point in time but, again, I think these issues can be resolved easily."

¶ 31 The trial court entered a written order finding that it was consistent with the

health, welfare, and safety of the minors and in their best interests that they be made wards of the court. The court found Rommel was unfit for reasons other than financial circumstances alone to care for, protect, train, and discipline any of the minors and "placement with him is contrary to the health, safety and best interests of the minors." The court ordered custody and guardianship be placed in the guardianship administrator of DCFS.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Rommel appeals, arguing the trial court erred by (1) removing the custody of L.N. and A.N. from Rommel at the shelter care hearing, (2) finding that Rommel was unfit at the dispositional hearing, and (3) finding it was in the minors' best interests to remain in DCFS custody. We disagree and affirm.

¶ 35 A. The Shelter Care Hearing

¶ 36 Rommel first argues that the trial court's findings of probable cause and urgent necessity were against the manifest weight of the evidence. The State responds that the issue is moot. We agree with the State.

¶ 37 An appeal is considered moot where "no actual controversy exists or when events have occurred that make it impossible for the reviewing court to render effectual relief." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10, 51 N.E.3d 788. An appeal of findings made in a temporary custody hearing is moot where there is a subsequent adjudication of wardship. *In re J.W.*, 386 Ill. App. 3d 847, 852, 898 N.E.2d 803, 808 (2008).

¶ 38 Here, the trial court removed temporary custody from Rommel at the shelter care hearing. Subsequently, at the dispositional hearing, the minors were adjudicated wards of the

court. Rommel cannot receive relief from this court because the shelter care hearing resulted in temporary custody, which this court cannot undo. Moreover, the trial court's dispositional order essentially superseded the temporary order. Accordingly, we conclude Rommel's arguments are moot.

¶ 39 B. The Manifest Weight of the Evidence

¶ 40 1. *The Law*

¶ 41 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2018)) provides a systematic framework for determining when a minor can be removed from his or her parents and made a ward of the State. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. A trial court must make a finding of abuse, neglect, or dependence regarding a child before it can adjudicate the child a ward of the court. 705 ILCS 405/2-10 (West 2018). If a trial court finds a child is neglected, then the court holds a dispositional hearing at which the "court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012 IL 113875, ¶ 21. Section 2-27(1) of the Act provides as follows:

> "If the court determines and puts in writing the factual basis supporting the determination of whether the parents *** of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents ***, the court may [remove the minor from a parent's custody.]" 705 ILCS 405/2-27(1) (West 2018).

The trial court may make four basic types of dispositional orders with respect to a ward of the

court. *In re M.M.*, 2016 IL 119932, ¶ 18, 72 N.E.3d 260. "The minor may be (1) continued in the care of the minor's parent, guardian, or legal custodian; (2) restored to the custody of the minor's parent, guardian, or legal custodian; (3) ordered partially or completely emancipated; or (4) 'placed in accordance' with section 2-27 of the Act." *Id.* (quoting 705 ILCS 405/2-23(1) (West 2012)).

¶ 42 The rules of evidence do not apply at dispositional hearings, and the trial court is free to consider anything that it finds helpful to make an appropriate disposition. *In re A.L.*, 409 Ill. App. 3d 492, 502-03, 949 N.E.2d 1123, 1131 (2011); 705 ILCS 405/2-22(1) (West 2018). A trial court's ruling at a dispositional hearing "will be reversed only if the findings of fact are against the manifest weight of the evidence[.]" *J.W.*, 386 Ill. App. 3d at 856. A finding is against the manifest weight of the evidence if the opposite result is clearly proper. *In re Audrey B.*, 2015 IL App (1st) 142909, ¶ 32, 31 N.E.3d 892. When reviewing a trial court's judgment under the manifest weight of the evidence standard, a reviewing court will not substitute its judgment for that of the trial court on matters of witness credibility, the weight to be given to the evidence, and inferences to be drawn from the evidence. *In re Parentage of W.J.B.*, 2016 IL App (2d) 140361, ¶ 25, 68 N.E.3d 977.

¶ 43 2. *This Case*

¶ 44 The trial court's finding was not against the manifest weight of the evidence. The integrated assessment and the dispositional report state that the reason L.N. and A.N. came into care was concern over substance abuse. The evidence presented at the shelter care hearing supports the conclusion. Kulbiski testified that when she arrived, Rommel did not appear intoxicated and the home did not smell of cannabis. Twenty minutes later, when she returned with a police officer and another DCFS investigator (as warned), (1) the home had a strong smell

of cannabis, (2) Rommel was upstairs and would not come down, (3) the police officer reported a bong sitting in the middle of the floor of one of the upstairs bedrooms, which was filled with smoke, and (4) Rommel appeared high. The integrated assessment and dispositional report state that Rommel admitted to using cannabis as a calming agent multiple times per week and Rommel indicated that (1) he did not need a drug abuse assessment (2) he did not think he needed to abstain from using during the case, and (3) he was experiencing anxiety and depression because his children were in DCFS care.

¶ 45 The integrated assessment and the dispositional report provided an extraordinarily comprehensive and detailed description of this family's circumstances. The assessment explained that Rommel was "hesitant and guarded" during his interview and reluctant to give basic information. Further the assessment stated that Rommel minimized his problems or role in events while blaming others, revealing "persecutory thoughts." The dispositional report showed that Rommel missed several virtual visits with the children and blamed the caregivers' internet connection. "Rommel did participate [in the integrated assessment] but was guarded and refused to answer question[s] and the responses were minimal and some inaccurate." Rommel reported generally that he was involved in a prior domestic violence incident but did not provide specifics. Rommel admitted he was convicted of domestic violence in 2015 but did not disclose that he had an upcoming criminal trial in 2020 for a traffic offense and resisting arrest.

¶ 46 Given this context, we conclude that the trial court's concern with Rommel's drug use was not unreasonable. The court clearly understood Rommel's position that cannabis use was legal, and it observed that alcohol is treated similarly. The court explained that assessments were needed to determine if Rommel needed mental health treatment, substance abuse treatment, or both. Giving appropriate deference to the trial court, as we must, the court could have found

significant that Rommel used cannabis after a stressful situation—namely, DCFS's visiting his home and threatening to call the police and take his children. At the shelter care hearing, the court noted that evidence showed Rommel was smoking with persons under the age of 21 or in close proximity to them. The trial court could have concluded that Rommel's reluctance to cooperate with DCFS, his self-medicating with cannabis, and his ongoing feelings of anxiety and depression constituted "a relatively minor incident [that] could be symptomatic of more profound problems." *In re Chyna B.*, 331 Ill. App. 3d 591, 597, 772 N.E.2d 301, 307 (2002).

¶ 47 Rommel contends that the minor nature of his problems, repeatedly emphasized by the trial court, means that the court should have chosen a less serious disposition instead of removing the children. Although we are not unsympathetic to Rommel's contention, we will not second guess the trial court or simply substitute our judgment for its judgment. The trial court was well served with a detailed dispositional report and integrated assessment. The trial court's disposition here, although not necessarily the one another court might have made, is sufficiently supported by the record for this court to conclude that the trial court's finding was not against the manifest weight of the evidence.

¶ 48 3. *Rommel's Other Arguments*

¶ 49 Rommel argues that the trial court was impermissibly discriminating against him based on cannabis use. The court concluded at the shelter care hearing that Rommel's actions were not protected by the Cannabis Act, and nothing presented subsequent to that hearing challenged that finding. As such, Rommel was not entitled to the Act's heightened standard.

¶ 50 Rommel asserts that section 10-30 of the Cannabis Act prevented the State from using evidence of his use of cannabis in the neglect proceedings unless it showed by clear and convincing evidence that the use caused an "unreasonable" safety risk to the minors. 410 ILCS

705/10-30(a) (West Supp. 2019). However, section 10-30 specifically provides that no "activities *lawful* under this Act *** shall form the sole or primary basis or supporting basis for any action or proceeding by a child welfare agency or in a family or juvenile court ***." (Emphasis added.) *Id.* As the trial court noted at the shelter care hearing, section 10-35(a)(3)(G) prohibits the use of cannabis in close proximity of persons under the age of 21. *Id.* § 10-35(a)(3)(G).

¶ 51 The trial court found Rommel engaged in cannabis use in close proximity to persons under the age of 21 and the evidence presented at both the shelter care hearing and the dispositional hearing supports such a finding. Section 10-30(a) concludes by explicitly stating, "This subsection applies only to conduct protected under this Act." *Id.* § 10-30(a). Whether or not Rommel engaged in conduct protected by the Cannabis Act did not have to be proved by clear and convincing evidence; that determination was subject to the same standard as any other findings in civil cases: a preponderance of the evidence. See *In re Kelvion V.*, 2014 IL App (1st) 140965, ¶ 23, 24 N.E.3d 231; 705 ILCS 405/2-18, 2-22, 2-27 (West 2018).

¶ 52 Rommel further asserts that the trial court shifted the burden of proof to Rommel and forced him to prove his fitness by requiring defendant to participate in substance abuse and mental health assessments prior to determining him fit. We disagree. Once the trial court adjudicated L.N. and A.N. neglected, Rommel was required to cooperate with DCFS. Further, the trial court was permitted to require more evaluation of Rommel before finding him fit. We earlier concluded that the court's finding was not against the manifest weight of the evidence. Thus, the State met its burden.

¶ 53 *In re L.W.* provides a good comparison. In that case, the minors were adjudicated neglected based on two of the children having unexplained broken legs within a few weeks. *In re L.W.*, 2021 IL App (5th) 200311, ¶ 7. The father's two children were placed with him prior to the

dispositional hearing. *Id.* ¶ 6. Due to COVID-19 and communication problems, the father missed a doctor's appointment for one of the children. *Id.* ¶ 31. The father had also recently moved four hours away. *Id.* ¶ 30. At the dispositional hearing, the trial court found the father unfit because of (1) the missed appointment, (2) a lack of visitation, (3) a lack of child support, and (4) a lack of DCFS investigation. *Id.* ¶¶ 14-15.

¶ 54 The Fifth District reversed because the trial court's findings were against the manifest weight of the evidence or improper. *Id.* ¶¶ 30-32. For example, the evidence showed that the father was never made aware of the appointment he had missed and that the father rescheduled and attended the appointment prior to the dispositional hearing. *Id.* ¶ 31. Further, the father had only recently moved, and the uncontroverted evidence showed that he had regular and extended visitation with the minors prior to his moving. *Id.* ¶ 30. The Fifth District also noted that it was the mother's burden to prove unfitness because she was requesting the finding. *Id.* ¶ 33. The reports provided by DCFS found no safety problems and concluded the children were doing well in their father's care. *Id.* ¶ 31. Without these findings, the trial court could not rely on financial circumstances alone to find the father unfit. *Id.* ¶ 32.

¶ 55 In *L.W.*, the trial court wanted additional DCFS information because it distrusted the quality of the report and the vagueness of the information provided. *Id.* ¶¶ 14, 33. In this case, the court relied heavily on the reports and the content of those reports was detailed and different in kind from the report in *L.W.* Here, DCFS concluded, as the trial court had, that the minors were not safe with Rommel. The minors had also not been living with Rommel and were doing well in foster care. The lack of information here was the result of Rommel's conduct, not DCFS's, and the State did meet its burden of persuasion to show unfitness. Had Rommel's cooperation with DCFS shown that he did not have any problems that needed further

investigation, the result may well have been different. And Rommel may well be able to show he is fit with little effort and no treatment, as the trial court suggested at the dispositional hearing. Nonetheless, the trial court did have sufficient information to conclude Rommel was unfit in the absence of formal assessments of his substance use and mental health.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment.

¶ 58 Affirmed.